

CSD 1001A [11/15/04]

Name, Address, Telephone No. & I.D. No.

Kit James Gardner (161736)
 LAW OFFICES OF KIT J. GARDNER
 501 West Broadway, Suite 800
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Order Entered on
 November 20, 2017
 by Clerk U.S. Bankruptcy Court
 Southern District of California

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA
 325 West "F" Street, San Diego, California 92101-6991

In Re

LIGNUS, INC.

Debtor.

BANKRUPTCY NO. 17-05475-CL11

Date of Hearing: N/A

Time of Hearing: N/A

Name of Judge: Hon. Christopher B. Latham

**ORDER ON
 STIPULATION WITH TOYOTA INDUSTRIES COMMERCIAL FINANCE, INC. TO PROVIDE
 ADEQUATE PROTECTION**

IT IS ORDERED THAT the relief sought as set forth on the continuation pages attached and numbered two (2) through 7 with exhibits, if any, for a total of 7 pages, is granted. Motion/Application Docket Entry No. 46 jrm

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NOT APPROVED -- Inadequate Service. FRBP 4001(d)(1)(C) requires a stipulation for stay relief to be served on the 20 largest unsecured creditors in a Ch. 11 case without an official committee. Stipulation to be re-served. Once the 14-day objection period of FRBP 4001(d)(2) has run, movant may resubmit its order.

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DATED: November 17, 2017

NOT APPROVED

Signature by the attorney constitutes a certification under
 Fed. R. of Bankr. P. 9011 that the relief in the order is the
 relief granted by the court.

Submitted by:

LAW OFFICES OF KIT J. GARDNER
 (Firm name)

By: /s/ Kit J. GardnerAttorney for ☒ Movant ☐ Respondent

Christopher B. Latham
 Judge, United States Bankruptcy Court

Having reviewed the Stipulation between the Debtor-in-Possession, Lignus, Inc. (the "Debtor") on the one hand, and Toyota Industries Commercial Finance, Inc. ("Toyota"), on the other hand, for the Debtor to provide adequate protection payments to Toyota (the "Stipulation"), a copy of which is attached hereto as Exhibit "A", and good cause appearing,

IT IS HEREBY ORDERED THAT the Stipulation is approved, and the Debtor is authorized to make the adequate protection payments to Toyota with respect to the items of equipment set forth and referenced in the Stipulation, in the amounts set forth therein.

IT IS SO ORDERED.

EXHIBIT “A”

1 Kit James Gardner (161736)
2 **LAW OFFICES OF KIT J. GARDNER**
3 501 West Broadway, Suite 800
4 San Diego, CA 92101
5 Telephone: (619) 525-9900
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8 Attorney for Debtor-in-Possession
9 Lignus, Inc.

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12 **UNITED STATES BANKRUPTCY COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 In re

15 LIGNUS, INC.,

16 Debtor.

CASE NO. 17-05475-CL11

CHAPTER 11

**STIPULATION WITH TOYOTA
INDUSTRIES COMMERCIAL FINANCE,
INC. TO PROVIDE ADEQUATE
PROTECTION**

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20 This Stipulation is entered into between the Debtor-in-Possession, Lignus, Inc. (the
21 "Debtor") on the one hand, and Toyota Industries Commercial Finance, Inc. ("Toyota") on the
22 other hand (collectively, the "Parties") by and through their counsel of record, with reference to
23 the following facts:

24 **RECITALS**

25 A. On September 8, 2017, the Debtor filed a Chapter 11 bankruptcy petition in the
26 United States Bankruptcy Court for the Southern District of California (the "Bankruptcy Court").
27 The Debtor intends to submit a Plan of Reorganization that proposes to pay all creditors in full.

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B. Among the assets listed in the Debtor's bankruptcy Schedules are the following items of equipment in which Toyota claims a security interest (collectively, the "Equipment"):

FORKLIFTS

SERIAL NUMBER

7FGU35-62436

7FBEU20-12451

8FGCU30-11702

7FGCU35-71131

8FGCU30-16308

TRUCKS

VEHICLE IDENTIFICATION NUMBER

JHHSPM2HXGK001778

JHHSPM2H9GK001769

C. Since filing its bankruptcy petition, the Debtor has not paid the contractual monthly installment payments in the amounts set forth above for any of the items of Equipment.

D. The Debtor has agreed to commence making regular monthly installment payments to Toyota with respect to each item of Equipment in the amounts set forth above as adequate protection payments, as well as cure all post-petition arrears.

NOW THEREFORE, IT IS HEREBY STIPULATED THAT:

1. The recitals set forth above are incorporated herein by reference.

2. The Debtor shall make regular monthly installment payments to Toyota as follows:

FORKLIFTS

SERIAL NUMBER

CONTRACTUAL MONTHLY PAYMENT

7FGU35-62436 \$420.35

7FBEU20-12451 \$302.65

8FGCU30-11702 \$293.91

7FGCU35-71131 \$374.50

8FGCU30-16308 \$313.77

TRUCKS

VIN

CONTRACTUAL MONTHLY PAYMENT

JHHSPM2HXGK001778 \$857.98

JHHSPM2H9GK001769 \$857.98

1 3. This Stipulation is subject to approval by the Bankruptcy Court, and shall not
2 become effective until an Order approving this Stipulation is entered by the Bankruptcy Court
3 that is no longer subject to appeal, review, rehearing, or reconsideration (the "Final Order").

4 4. The monthly installment payments required to be paid pursuant to Paragraph 2 of
5 this Stipulation shall be paid on or before the 1st day of each month, starting with the first full
6 month following the date that the Final Order becomes final. The Debtor will remit a single
7 check representing the total monthly amount due for all items of Equipment. In the event that
8 the Debtor remits a check in an amount that is less than the total monthly installment payment of
9 all items of Equipment, the Debtor will inform Toyota in writing as to: (a) the specific item of
10 equipment for which a monthly installment is not being made; and (b) the reason for the shortfall
11 (for instance, all post-petition amounts owing on one or more specific items of Equipment are
12 likely to be paid in full during the time that this Stipulation remains in effect).

13 5. In addition to making the monthly installment payments set forth in Paragraph 4,
14 the Debtor shall cure all post-petition arrears that have accumulated as of the date that the Final
15 Order becomes final, which shall be payable within ten (10) days after the Final Order becomes
16 final.

17 6. In the event that the Debtor fails to timely perform its obligations as set forth in
18 this Stipulation with respect to any or all of the items of Equipment, Toyota shall notify the
19 Debtor in writing. Debtor shall have ten (10) calendar days from the date of such notification to
20 cure the default. In the event that the Debtor fails to cure the default, then Toyota may lodge a
21 Declaration of Default and an Order Terminating Stay ("OTS") with respect to any item of
22 Equipment for which the Debtor has failed to satisfy its obligations upon *Ex Parte* Application
23 with 72 hours telephonic notice to Debtor's counsel. The Debtor may contest entry of the OTS
24 on the grounds that the Debtor is in full compliance with the terms of this Stipulation. Upon
25 entry of the OTS, the automatic stay shall be immediately terminated and extinguished for all
26 purposes as to Toyota with respect to the Equipment, whereupon Toyota may pursue its
27 remedies under state law including, without limitation, repossession of the Equipment.

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1 7. Any notice required by this Stipulation shall be in writing and shall be delivered to
2 the address below via First Class U.S. Mail, and via e-mail. Delivery shall be deemed complete
3 upon mailing. Changes to the addresses below must be in writing and delivered to the other
4 party pursuant to the terms set forth in this Paragraph.

5 If to the Debtor:

6 Lignus, Inc.
7 Attn: Jose Gaitan
8 531 Alta Road #8
9 San Diego, CA 92154

10 With a copy to:

11 Kit J. Gardner, Esq.
12 501 W. Broadway, Suite 800
13 San Diego, CA 92101
14 Email: kgardner@gardnerlegal.com

15 If to Toyota:


16 Scott D. Fink, Esq.
17 Weltman, Weinberg & Reis Co., L.P.A.
18 965 Keynote Circle
19 Brooklyn Heights, OH 44131
20 Email: sfink@weltman.com

21 8. Each person executing this Stipulation has been duly and fully authorized to
22 execute this document and enter into this Stipulation on behalf of the party they purport to
23 represent.

24 9. This Stipulation may be executed in one or more counterparts and shall be
25 binding and effective immediately upon the execution by all parties of one or more counterparts.
26 A copy and/or fax of this Stipulation shall have the same force and effect as an original.

27 Dated: 11/9/17

LAW OFFICES OF KIT J. GARDNER

28 By: 
Kit J. Gardner
Attorney for Debtor-in-Possession Lignus, Inc.

29 Dated: ~~January 22, 2013~~
November 9, 2017

WELTMAN, WEINBERG & REIS CO., L.P.A.

By: 
Scott D. Fink
Attorney for Toyota Industries Commercial Finance, Inc.

United States Bankruptcy Court
Southern District of California

In re:
Lignus, Inc.
Debtor

Case No. 17-05475-CL
Chapter 11

CERTIFICATE OF NOTICE

District/off: 0974-3

User: Admin.
Form ID: pdf01

Page 1 of 1
Total Noticed: 2

Date Rcvd: Nov 20, 2017

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Nov 22, 2017.

db +Lignus, Inc., 531 Alta Road #8, San Diego, CA 92154-5720
cr +County Of San Diego, Treasurer-Tax Collector, 1600 Pacific Highway, Room 162,
San Diego, CA 92101-2477

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
NONE. TOTAL: 0

***** BYPASSED RECIPIENTS (undeliverable, * duplicate) *****
cr Toyota Industries Commercial Finance Inc.

TOTALS: 1, * 0, ## 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

Transmission times for electronic delivery are Eastern Time zone.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Nov 22, 2017

Signature: /s/Joseph Speetjens

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on November 20, 2017 at the address(es) listed below:

Kit J. Gardner on behalf of Debtor Lignus, Inc. kgardner@gardnerlegal.com
Leslie Skorheim on behalf of United States Trustee United States Trustee
leslie.skorheim@usdoj.gov, USTP.Region15@usdoj.gov, tiffany.l.carroll@usdoj.gov
United States Trustee ustp.region15@usdoj.gov

TOTAL: 3